

October 30, 2017

Dr. Hoskins,

We are 16 present and former employees of the Royal College of Dental Surgeons of Ontario (RCDSO or the College). We write to express our collective concerns about serious systemic problems within the College that impact the wellbeing of its employees and negatively affect the College's ability to fulfill its mandate. Having run out of options to create change from within or through the RCDSO Council, we ask you to exercise your authority under s. 5.0.1 of the *Regulated Health Professions Act* to recommend that a supervisor be appointed for the RCDSO. We also ask that you implement whistleblower protection for employees of health profession colleges so others don't have to endure what we have in order to seek redress.

We are sending this anonymously out of fear of retaliation. Nevertheless, should you request information to corroborate our account or concerns, we would be happy to provide it in a manner consistent with our need for anonymity.

We wish to state at the outset that our purpose in writing to you is not to vilify any particular person. Our overriding concern is for the well-being of RCDSO staff, friends and colleagues, who are hampered in their efforts to efficiently and effectively protect the public interest by poor working conditions. While we don't each have personal knowledge of all the following points, this letter accurately reflects our collective experience and we all agree that the only way to resolve the problems at the RCDSO is to remove the Registrar and all current members of Council.

As you understand, in order to properly protect the public, regulators must demonstrate the highest ethical and professional standards in their interactions with stakeholders, including staff, registered members, governments and, of course, the public. Regulatory bodies must be transparent. They must establish and rigorously follow fair policies and procedures. Unfortunately, we are of the opinion that the RCDSO falls short in each of these areas.

Toxic culture at the RCDSO

No organization can be successful in the long term unless the workplace is healthy. There must be safeguards in place to ensure employees work in a positive environment, free from harassment, reprisal and abuse. Staff must have avenues for expressing their concerns in confidence and without fear.

The RCDSO is not a healthy workplace. Through intimidation and favouritism, a culture of hostility and mistrust has been created. Employees are pitted against one another and are sometimes encouraged or even required to spy on each other. There are no apparent guidelines for pay raises, and merit increases seem to go to those who are most loyal to the Registrar, as do promotions. Staff are only aware of what others earn and that some people receive bonuses through gossip and bragging, and no one knows what it takes to qualify for a bonus. While our concerns are about transparency and fairness not compensation, all of this incites poisonous rivalries and impedes collaboration.

Neither are RCDSO staff protected from bullying and harassment and this culture is set at the highest level. Although the RCDSO has official worker-protection policies developed in accordance with relevant legislation, they are not always followed. A small sample of the improprieties that plague the College are as follows:

- In 2010, allegations of serial sexual abuse by a member of RCDSO's executive team were not properly investigated by a third party. In fact, the Registrar himself questioned suspected victims, then told them not to discuss the matter with others while the abuser was permitted to resign with severance rather than being terminated for cause. In order to protect the survivors from embarrassment, we cannot fully divulge the details. Nevertheless, the abuse of power that took place during that period of time resulted in traumatic incidents for several female staff, the effect of which remains today.
- A retired staff member working part-time at the College who was the subject of an "investigation" into several reports of sexual harassment was allowed to retire again months after the last report. He is now conducting dental office inspections on behalf of the RCDSO.
- A recent formal complaint of bullying by an administrative assistant was not handled according to the RCDSO's written policy and, despite a finding by the HR Director that the complaint had merit, the harasser suffered no real consequences. In fact, he received a promotion a few months later. Informal complaints about violations of Bill 168 are similarly minimized.

This kind of mistreatment of staff by any employer would be unacceptable; for a regulator, it is unconscionable. The worst part is that RCDSO employees have nowhere to turn for help. The HR Director is either unable or unwilling to advocate for fair HR practices and most people do not feel safe talking to him. Employees who have a complaint about one of the Registrar's favourites know there is no point in bringing their concerns to HR. Staff should be able to approach Council, but the Registrar prohibits any communication between them about "College business" on pain of termination for cause. New employees who may come into contact with Council members are told not to discuss "College business" and to "change the subject" if a Council member asks about the RCDSO's operations. The Registrar told one staff member that Council doesn't need to know about College affairs because Council governs the Registrar and no one else at the RCDSO.

Council is, in our opinion, willfully blind. In early 2010, two victims of the sexual abuser confided in a community dentist who approached the President of the RCDSO on their behalf, only to be told to speak to the Registrar. After the Registrar fired the Director of the Professional Liability Program (PLP), which provides malpractice protection to Ontario dentists, she wrote to Council in February of this year about toxicity at the RCDSO and requested a workplace assessment. It is incomprehensible to us why Council denied her request. If, as the Registrar likely told Council, there are no HR issues at the College, an independent review would have confirmed that. Instead, Council voted against hearing directly from staff, knowing it was risking legal action by the former Director by doing so. If any review was performed, it must have been superficial and inadequate as not a single one of us has heard anything about it, much less been asked to participate. The College is now spending money defending a lawsuit in which some of us will probably be called to testify on behalf of the plaintiff that could have been

avoided for the cost of an assessment. Two staff members who resigned recently and also sent letters to Council about HR issues received no response.

These problems have serious repercussions for the RCDSO's ability to protect the public: extremely high turnover, including three Directors this year, but especially in the Professional Conduct and Regulatory Affairs (PCRA) department, results in chronic understaffing, inadequate training and low morale. All of this prevents staff from responding to patient complaints in a timely manner. The financial fallout from this and the costs of recruitment are undoubtedly significant, but no one has been called to account for the situation or for the severance payments that have reportedly been made to buy the silence of RCDSO employees terminated without cause (five so far this year alone).

Other examples of fiscal mismanagement at the College include mystery bonuses and heavy investment in failed or abandoned projects. But none of that fully explains the RCDSO's budget shortfall for 2017. While the exact amount depends on who you ask, we have heard the budgetary woes estimated at \$2-\$4 million, this after years of surpluses. The Registrar communicated the financial problems in a series of staff meetings during which he gave varying estimates of the deficit and no explanation of the reasons, causing staff to fear for their jobs. The President of the RCDSO wrote an email to all staff saying it is necessary to cut catering expenses in order to avoid increasing registration fees and HR followed up with a memo stating that the College will no longer be purchasing soda pop or Perrier for meetings. Meanwhile, the Registrar and two other RCDSO employees recently travelled to London, U.K. for a conference, likely business class and likely at the members' expense. Neither the budget crisis nor the response makes any sense, and a forensic audit may be required to identify and fix the causes.

The following excerpts from the report submitted to Education Minister Mitzie Hunter by Suzanne Herbert and Patrick Case about the crisis in the York Region District School Board could have been written about the RCDSO:

Based on our discussions, we found far too many Board members failed to demonstrate a basic understanding of their role and responsibilities..., and the rest had varying degrees of understanding. This was particularly evident during discussions on information the Board should rely on in exercising their fiduciary responsibilities such as costs for legal fees, staff settlements, and their stewardship responsibilities...

Staff in divergent roles and at different levels shared patterns of behaviour which illustrated a lack of senior level leadership and judgement.

[T]he...administration is suffering from damaged relationships, low morale, mistrust, and a lack of strong, principled leadership...We heard consistent accounts that paint a picture of a very fractured...team that is operating in a culture of distrust. Many expressed feelings of intimidation. In fact, low morale, distrust, and intimidation were common themes in the submissions we received...This appears to have been cultivated by the director...We heard that

the sense of distrust was further fostered by the director's request of some...staff to "spy" on other members of the...team...

Related to the lack of a board leadership plan...is the confusion we heard related to staff promotions, transfers and departures. We heard a common perception that promotions...were done less for strategic reasons and more on the basis of favouritism. We heard that...decisions...are seen to be made in response to...requests or to "reward" those that were "loyal" to the director. We heard of...staff being marginalized, excluded, sidelined and, in some cases, pushed out, and this is without doubt contributing to the culture of fear and distrust. This perception that staffing decisions are lacking in transparency and appear to be "more about an individual's relationship with the director than the individual's experience" is widespread in the organization.

Comments in the Executive Summary of the recent Workplace Climate Assessment of CSIS's Toronto Region Office and Districts to the effect that its employees believe in the mission of the organization but suffer from pervasive low morale and negativity due to poor leadership, lack of trust in management, bullying and fear of retribution are similarly apropos.

Failure to protect the public

The RCDSO has failed patients in at least two important ways: its misuse of alternative dispute resolution (ADR) in resolving complaints and its mishandling of Public Health Ontario's recent changes to its infection prevention and control (IPAC) protocols.

Misuse of ADR

ADR can be an effective tool for resolving patient complaints that do not involve public safety, and the RCDSO has developed criteria for determining which cases may be suitable for diversion to ADR. Any negotiated resolution of a complaint through ADR must be ratified by the Inquiries, Complaints and Reports (ICR) Committee.

The problem is that the referral criteria aren't always followed and parties are sometimes steered toward ADR even when the College's guidelines aren't met. In February 2015, the Manager of PCRA was advised that an ICR panel struggled with two ADR resolutions, one involving informed consent and the other possible billing fraud. The Manager's response was that the College (at the Registrar's direction) was trying to send as many files to ADR as possible and "we are inevitably going to get the odd one wrong." An ICR panel that considered a request to endorse an ADR outcome in April 2017 expressed discomfort because the panel hadn't seen the dentist's records and could not therefore attest that the interests of the public were served by the resolution. Moreover, the ICR panel was unable to conclude that the matter before them presented minimal risk to public safety, as the standard letter assured. The solution was to remove that language from the template letter for all matters going forward. The motivation for this is unclear but obviously has nothing to do with patient safety.

A related issue is the RCDSO's longstanding practice of allowing a member to settle a matter through ADR by making a financial payment to the complainant in exchange for a release of liability (often provided by an RCDSO staff member), despite the College's standard warning that the regulatory process is not a mechanism for obtaining compensation. There are good reasons for not blurring those lines. Permitting a patient with a potentially valid complaint to be "bought off" does nothing to advance public protection. Conversely, a regulator involved in the business of compensating patients, even indirectly, runs the risk of encouraging frivolous complaints for financial gain.

Mishandling of IPAC

The RCDSO put patients and members at risk by dropping the ball on IPAC. RCDSO staff have known since at least June 2016 that Public Health Ontario was determined to enforce its IPAC guidelines in dental offices and that members could be shut down by Public Health despite meeting the RCDSO's IPAC guidelines. In October 2016, Registrars of all health profession colleges in Ontario were directed by the Chief Medical Officer of Health to advise their members of the new requirements. For some reason, the RCDSO only notified members in July 2017, after a number of dental offices had been investigated by local public health authorities and at least three had been shut down for IPAC lapses. On its website and in presentations to dental societies and groups, the RCDSO has not been forthcoming about its role in the delay. The inspections have also triggered two class actions against the dentists, which PLP is defending.

Conflicts of interest

By acting both as regulator of and insurer for Ontario dentists, the RCDSO is in an obvious conflict of interest that creates serious ethical dilemmas for staff.

In order to persuade members to report incidents to PLP in a timely fashion so as not to jeopardize their entitlement to assistance in case of a claim, the College's messaging has always been that there is no communication between PLP and the regulator about files. In reality, this is impossible to achieve because PLP is embedded within the College and there is no fool-proof way of preventing regulatory staff from accidentally overhearing details of files from PLP staff and vice versa, in violation of s. 36 of the *Regulated Health Professions Act*. The College's electronic media privacy policy makes it clear that other departments of the RCDSO (presumably HR, IT and the Registrar) can monitor PLP's email and other electronic work product at their discretion. All of this obviously undermines any alleged privilege or confidentiality that members might expect in their dealings with PLP. In any event, the Registrar has not only the right, but arguably the obligation to access information from PLP in order to perform his duties as CEO of the RCDSO and to protect the public.

The Registrar's compliance with the messaging has therefore been on the honour system, which has broken down from time to time. He recently brushed off concerns about meetings he chaired between investigators and PLP staff to discuss files in 2006 by saying no information obtained from PLP during those discussions made its way into any regulatory process, though perhaps it should have. The very fact that the meetings occurred should preclude RCDSO staff from continuing to assert that no information-sharing between the "two parts" of the College ever takes place, but they still do.

In fact, since he fired the former Director, the Registrar is effectively running PLP. The current Manager consults with and defers to the Registrar on all important decisions. The Registrar routinely walks through PLP's space, and General Counsel for the College has received materials for and attended PLP Committee meetings where case files were discussed. Members are largely unaware of this change in circumstances and would be very reluctant to call PLP if they knew.

Members also have no idea that, in response to public disclosure of the 2006 meetings, the Registrar has created an Access to Justice working group with the aim of making it easier for patients to obtain compensation from PLP—perhaps to reconcile PLP's mandate, which has historically been to defend members, with the rest of the College's. This is problematic. First, mixing regulation with compensation taints regulatory processes and results. And while the RCDSO's statutory obligation is to the public, not dentists, the RCDSO voluntarily assumed a moral and ethical, if not a legal duty to members by establishing PLP and forcing them to fund it.

As you know, although there is a requirement for health profession regulators to ensure registrants have adequate malpractice protection, they do not have to make that protection available, let alone run an insurance program. Ontario dentists pay extra fees to the RCDSO and have built a reserve fund that now totals approximately \$24 million in the expectation that PLP is advocating for their interests and reputations. If that is to change, the membership should be consulted, though the Registrar has shown no intention of seeking their input. Instead, he appears ready to push the changes to PLP through the RCDSO's Executive Committee and Council, whose members do not understand that, in this situation, they are entitled and perhaps even obliged to consider and promote the interests of members.

Other abuses of power

Some of us have first-hand knowledge of the Registrar's direct and indirect interference in regulatory processes, often to facilitate more lenient treatment for friends and allies. He has short-circuited investigations into patient complaints and influenced ICR panel decisions. Recently, he intervened to ensure that a Council member was able to continue providing sedation and anaesthesia uninterrupted despite deficiencies identified during a routine inspection.

Flawed governance model

In our view, what has led to this situation at the RCDSO is a governance structure that invites abuse. Council is responsible for overseeing the activities of the RCDSO, but it is not realistic to expect members of Council whose professional standing may be negatively influenced by the Registrar to effectively supervise or challenge him. On the flip side, the Registrar routinely rewards cooperative Council members with favours and perks, including letters of reference, international travel, coveted Committee assignments, professional appointments and contract work monitoring and mentoring on behalf of the College. By leveraging these rewards and the fear of punishment, the current Registrar has been able to secure Council support for changes to RCDSO policies, procedures and by-laws that strengthen and consolidate his power, starting with the formal elimination of the position of Deputy Registrar early in his tenure. Our opinion is that the Registrar controls the Executive Committee, not the reverse, in part because the Executive Committee and Council never obtain truly independent legal advice, but rather

rely on the Registrar and outside counsel with close, longstanding relationships with the Registrar to advise them.

With no meaningful oversight, the RCDSO's spending, business and employment practices remain opaque to the public, members and even RCDSO staff. RCDSO Council approved the Registrar's 2017 salary of more than \$600,000 and an extension of his contract to 2022, when he will be 76, behind closed doors. Even in the private sector, such terms would be extraordinary. In the public sector, concessions made to the Director of the York Region District School Board in his contract negotiations were roundly criticized by Minister Hunter. Not unlike the City of Brampton's secret bonus "program" recently investigated by Peel Regional Police, discretionary bonus payments at the RCDSO seem to be made on the basis of favouritism. It is not clear they are approved by or even reported to Council. Such questionable policies and spending are not scrutinized by members or the public because they don't know about them. It is unacceptable that a regulatory body that prides itself on spear-heading the drive for transparency in carrying out its statutory mandate is so reluctant to shine a light on its inner workings.

After unsuccessfully exploring every avenue available, we have reached the conclusion that the deficiencies in the RCDSO cannot be fixed under the present leadership or within the current system. Fortunately for them, parents, students and staff could count on the Minister of Education to restore order and integrity to a deeply troubled school board. We hope you will do the same for the RCDSO.

cc Kathleen Wynne, Dr. Bob Bell, Patrick Brown, Jeff Yurek, Andrea Horwath, France G  linas, Ron Yarascavitch